

SECOND REGULAR SESSION

# SENATE BILL NO. 1041

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR FLOTRON.

Read 1st time February 23, 2000, and 1,000 copies ordered printed.

4585S.011

TERRY L. SPIELER, Secretary.

## AN ACT

To repeal sections 34.070, 34.073, 37.020 and 575.060, RSMo 1994, and sections 34.040 and 34.046, RSMo Supp. 1999, relating to the office of administration, and to enact in lieu thereof eight new sections relating to the same subject, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 34.070, 34.073, 37.020 and 575.060, RSMo 1994, and sections 34.040 and 34.046, RSMo Supp. 1999, are repealed and eight new sections enacted in lieu thereof, to be known as sections 34.040, 34.046, 34.070, 34.072, 34.073, 37.020, 37.026 and 575.060, to read as follows:

34.040. 1. All purchases in excess of three thousand dollars shall be based on competitive bids, except as otherwise provided in this chapter.

2. On any purchase where the estimated expenditure shall be twenty-five thousand dollars or over, except as provided in subsection 5 of this section, the commissioner of administration shall:

(1) Advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders and may advertise in at least two weekly minority newspapers and may provide such information through an electronic medium available to the general public at least five days before bids for such purchases are to be opened. Other methods of advertisement, which may include minority business purchase councils, however, may be adopted by the commissioner of administration when such other methods are deemed more advantageous for the supplies to be purchased;

(2) Post a notice of the proposed purchase in his or her office; and

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

(3) Solicit bids by mail or other reasonable method generally available to the public from prospective suppliers. All bids for such supplies shall be mailed or delivered to the office of the commissioner of administration so as to reach such office before the time set for opening bids.

3. The contract shall be let to the lowest and best bidder. The commissioner of administration shall have the right to reject any or all bids and advertise for new bids, or purchase the required supplies on the open market if they can be so purchased at a better price. When bids received pursuant to this section are unreasonable or unacceptable as to terms and conditions, noncompetitive, or the low bid exceeds available funds and it is determined in writing by the commissioner of administration that time or other circumstances will not permit the delay required to resolicit competitive bids, a contract may be negotiated pursuant to this section, provided that each responsible bidder who submitted such bid under the original solicitation is notified of the determination and is given a reasonable opportunity to modify their bid and submit a best and final bid to the state. In cases where the bids received are noncompetitive or the low bid exceeds available funds, the negotiated price shall be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

4. All bids shall be based on standard specifications wherever such specifications have been approved by the commissioner of administration. The commissioner of administration shall make rules governing the delivery, inspection, storage and distribution of all supplies so purchased and governing the manner in which all claims for supplies delivered shall be submitted, examined, approved and paid. The commissioner shall determine the amount of bond or deposit and the character thereof which shall accompany bids or contracts.

**5. After August 28, 2000, no purchaser for the state shall enter into, renew or extend any state contract that by the terms of the contract intentionally prevents a Missouri based business from supplying the product or service. The state shall not set forth or adopt any standard as the basis of a contract that has the affect of eliminating all Missouri based businesses as a supplier to the state. Any contract which violates the provisions of this section shall be void as against public policy. The attorney general shall have sole discretion for making the determination as to whether a contract intentionally prevents a Missouri based business from supplying the product or service. The provisions of this subsection shall not apply to products or services for which there are no Missouri based businesses available to supply the product or service. This exemption shall be narrowly construed and shall be limited to unique products and services. The state auditor shall annually audit cost-plus contracts to determine if the state is receiving the best price.**

**6. The commissioner of administration shall adopt rules to clearly delineate procedures for distributing potential bids to Missouri based businesses, including publishing and receiving bids by the Internet.**

**7. For the purposes of this section, the following terms mean:**

**(1) "Missouri based business", a person, firm or corporation headquartered in Missouri;**

**(2) "Missouri based product", anything manufactured, assembled, mined, produced or grown in the state;**

**(3) "Missouri based service", anything that adds or maintains the value of an item or process;**

**(4) "State disaster emergency", an event that affects the life or property of the public as a whole.**

**8. Any contract that is let, renewed or extended that is based on the cost of the item or service plus a fixed guaranteed profit model shall be considered an open contract for which any willing provider who meets the technical requirements for the product or service may supply such product or service to the state except in the event of a state disaster emergency.**

**9.** The department of natural resources may, without the approval of the commissioner of administration required pursuant to this section, enter into contracts of up to five hundred thousand dollars to abate illegal waste tire sites pursuant to section 260.276, RSMo, when the director of the department determines that urgent action is needed to protect public health, safety, natural resources or the environment. The department shall follow bidding procedures pursuant to this section and may promulgate rules necessary to establish such procedures. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

34.046. The commissioner of administration may contract directly with other governmental entities for the purchase of supplies. The commissioner of administration may also participate in, sponsor, conduct or administer a cooperative purchasing agreement whereby supplies are procured in accordance with a contract established by another governmental entity, **including but not limited to the federal governmental services administration**, provided that such contract was established in accordance with the laws and regulations applicable to the establishing governmental entity.

34.070. In making purchases, the commissioner of administration shall give preference to all commodities manufactured, **assembled**, mined, produced or grown within the state of Missouri [and] **by awarding bids** to all firms, corporations or individuals doing business as Missouri

firms, corporations or individuals, when quality is equal or better and delivered price is the same or less.

**34.072. The state shall require thirty percent participation by Missouri-based businesses in every awarded contract. The provisions of this section shall not apply to products or services for which there are no Missouri-based businesses available to supply the product or service.**

34.073. 1. In letting contracts for the performance of any job or service, all agencies, departments, institutions, and other entities of this state and of each political subdivision of this state shall give preference to all firms, corporations, or individuals doing business as Missouri firms, corporations, or individuals, [or which maintain Missouri offices or places of business,] when the quality of performance promised is equal or better and the price quoted is the same or less.

2. Notwithstanding the requirements of subsection 1 of this section, the commissioner of administration shall give further preference as required by section 34.076.

37.020. 1. As used in this section, the following words and phrases mean:

(1) "Certification", the determination, through whatever procedure is used by the office of administration, that a legal entity is a socially and economically disadvantaged small business concern for purposes of this section;

(2) "Department", the office of administration and any public institution of higher learning in the state of Missouri;

(3) "Minority business enterprise", a business that is:

(a) A sole proprietorship owned and controlled by a minority;

(b) A partnership or joint venture owned and controlled by minorities in which at least fifty-one percent of the ownership interest is held by minorities and the management and daily business operations of which are controlled by one or more of the minorities who own it; or

(c) A corporation or other entity whose management and daily business operations are controlled by one or more minorities who own it, and which is at least fifty-one percent owned by one or more minorities, or if stock is issued, at least fifty-one percent of the stock is owned by one or more minorities;

(4) "Socially and economically disadvantaged individuals", individuals, regardless of gender, who have been subjected to racial, ethnic, or sexual prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area. In determining the degree of diminished credit and capital opportunities the office of administration shall consider, but not be limited to, the assets and net worth of such individual;

(5) "Socially and economically disadvantaged small business concern", any small business

concern:

(a) Which is at least fifty-one percentum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least fifty-one percentum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one or more of such individuals;

(6) "Women's business enterprise", a business that is:

(a) A sole proprietorship owned and controlled by a woman;

(b) A partnership or joint venture owned and controlled by women in which at least fifty-one percent of the ownership interest is held by women and the management and daily business operations of which are controlled by one or more of the women who own it; or

(c) A corporation or other entity whose management and daily business operations are controlled by one or more women who own it, and which is at least fifty-one percent owned by women, or if stock is issued, at least fifty-one percent of the stock is owned by one or more women.

2. The office of administration, in consultation with each department, shall establish and implement a plan to increase and maintain the **meaningful** participation of certified socially and economically disadvantaged small business concerns or minority business enterprises, directly or indirectly, in contracts for supplies, services, and construction contracts[, consistent with goals determined after an appropriate study conducted to determine the availability of socially and economically disadvantaged small business concerns and minority business enterprises in the marketplace. Such study shall be completed by December 31, 1991. The commissioner of administration shall appoint an oversight review committee to oversee and review the results of such study. The committee shall be composed of nine members, four of whom shall be members of business, three of whom shall be from staff of selected departments, one of whom shall be a member of the house of representatives, and one of whom shall be a member of the senate].

3. The goals to be pursued by each department under the provisions of this section shall be construed to overlap with those imposed by federal law or regulation, if any, shall run concurrently therewith and shall be in addition to the amount required by federal law only to the extent the percentage set by this section exceeds those required by federal law or regulations.

**4. The office of administration shall regularly, and at least annually, audit minority business enterprise participation reports.**

**37.026. 1. Any person who has formally served as the chief information officer of the office of administration or in the capacity of a similar position and has had the capacity to influence computer-related purchases by state agencies shall not be employed, retained, receive reimbursement, gifts, honoraria, travel, lodging, meals or speaker fees from any computer vendor, manufacturer, supplier, wholesaler, retailer**

**or any other entity which has a contract with the state of Missouri for a period of two years after leaving the employment of that position.**

**2. Any person who is currently serving as the chief information officer or in the capacity of a similar position shall not be employed, retained, receive reimbursement, gifts, honoraria, travel, lodging, meals or speaker fees from any computer vendor, manufacturer, supplier, wholesaler, retailer or any other entity which has a contract with the state.**

**3. Any person violating the provisions of this section is guilty of a class D felony and is subject to prosecution by either the attorney general or any local prosecuting attorney.**

**4. Any entity that has employed, retained, given reimbursement, gifts, honoraria, travel, lodging, meals or speaker fees to the chief information officer over the past five years shall report all expenditures to the Missouri ethics commission by October 1, 2000. Failure to report expenditures shall result in immediate disbarment from Missouri's procurement process. The attorney general shall have sole discretion in the determination of disbarment.**

575.060. 1. A person commits the crime of making a false declaration if, with the purpose to mislead a public servant in the performance of [his] **such public servant's** duty, [he] **the person**:

(1) Submits any written false statement, which [he] **the person** does not believe to be true:

(a) In an application for any pecuniary benefit or other consideration; or

(b) On a form bearing notice, authorized by law, that false statements made therein are punishable; or

(2) Submits or invites reliance on

(a) Any writing which [he] **the person** knows to be forged, altered or otherwise lacking in authenticity; or

(b) Any sample, specimen, map, boundary mark, or other object which [he] **the person** knows to be false[.]; **or**

**(3) Submits a false report to the state.**

2. The falsity of the statement or the item [under] **pursuant to** subsection 1 of this section must be as to a fact which is material to the purposes for which the statement is made or the item submitted; and the provisions of subsections 2 and 3 of section 575.040 shall apply to prosecutions [under] **pursuant to** subsection 1 of this section.

3. It is a defense to a prosecution [under] **pursuant to** subsection 1 of this section that the actor retracted the false statement or item but this defense shall not apply if the retraction was made after:

(1) The falsity of the statement or item was exposed; or

(2) The public servant took substantial action in reliance on the statement or item.

4. The defendant shall have the burden of injecting the issue of retraction [under] **pursuant to** subsection 3 of this section.

5. Making a false declaration is a class [B] **A** misdemeanor.

**6. Either the attorney general or the local prosecuting attorney may prosecute pursuant to the provisions of this section.**

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